



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

---

*5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041*

Rivas, Linda Yzaela  
Las Americas Immigrant Advocacy Center  
1500 E. Yandell Dr.  
El Paso, TX 79902

DHS/ICE Office of Chief Counsel - ELP  
11541 Montana Ave , Suite O  
El Paso, TX 79936

Name: GUTIERREZ SOTO, EMILIO  
Riders: [REDACTED]

[REDACTED]  
Date of this notice: 11/2/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Guendelsberger, John

Userteam: Docket

000029

Falls Church, Virginia 22041

---

Files: [REDACTED] El Paso, TX

Date: NOV - 2 2017

In re: Emilio GUTIERREZ SOTO  
Oscar GUTIERREZ SOTO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Linda Yzaela Rivas, Esquire

A Notice of Appeal (Form EOIR-26) must be filed within 30 calendar days of an Immigration Judge's oral decision or the mailing of a written decision unless the last day falls on a weekend or legal holiday, in which case the appeal must be received no later than the next working day. 8 C.F.R. § 1003.38(b), (c). In the instant case, the Immigration Judge's decision was mailed on July 19, 2017. The appeal was accordingly due on or before August 18, 2017. The record reflects, however, that the Notice of Appeal was mailed on the day it was due and not filed with the Board of Immigration Appeals until August 21, 2017. We find that the appeal is untimely. The Immigration Judge's decision is accordingly now final, and the record will be returned to the Immigration Court without further action. See 8 C.F.R. §§ 1003.3(a), 1003.38, 1003.39, 1240.14 and 1240.15.

Because we are dismissing the appeal as untimely, either party wishing to file a motion in this case should follow the following guidelines: If you wish to file a motion to reconsider challenging the finding that the appeal was untimely, you must file your motion with the Board. However, if you are challenging any other finding or seek to reopen your case, you must file your motion with the Immigration Court. See *Matter of Mladineo*, 14 I&N Dec. 591 (BIA 1974); *Matter of Lopez*, 22 I&N Dec. 16 (BIA 1998). You should also keep in mind that there are strict time and number limits on motions to reconsider and motions to reopen. See sections 240(c)(6)(A) & (B) and 240(c)(7)(A) & (C) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(c)(6)(A) & (B) and (c)(7)(A) & (C); 8 C.F.R. §§ 1003.2(c)(2), 1003.23(b)(1); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997).

In light of the foregoing, the following order will be entered.

ORDER: The record is returned to the Immigration Court without further action.

  
\_\_\_\_\_  
FOR THE BOARD

000030